

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5748

IN THE MATTER OF:

Served November 16, 1999

Investigation of Unauthorized)
Common Control of MALEK INVESTMENT,)
INC., Trading as MONTGOMERY AIRPORT)
SHUTTLE, WMATC No. 202, and MALEK)
INVESTMENT OF VIRGINIA, INC., by)
ASSADOLLAH MALEKZADEH)

Case No. MP-98-53

This matter is before the Commission on respondents' application for reconsideration of Order No. 5707, issued September 22, 1999.

Under the Compact, a party affected by a final order of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved.¹ The application must state specifically the errors claimed as grounds for reconsideration.² The Commission must grant or deny the application within 30 days after it has been filed.³ If the Commission does not grant or deny the application by order within 30 days, the application shall be deemed denied.⁴ If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.⁵

Order No. 5707, a final order within the meaning of the Compact, assessed three civil forfeitures against respondents: (1) \$500 for knowing and willful failure to timely respond to Order No. 5419; (2) \$500 for knowing and willful violation of the common-control provisions in the Compact; and (3) \$50,000, for Malek of Virginia's knowing and willful transportation of passengers for hire in the Metropolitan District from June 15, 1998, through December 31, 1998, without a WMATC certificate of authority in vans displaying Carrier No. 202's WMATC identification. All but \$15,000 of the third assessment was suspended in recognition of respondents' production of inculpatory documents. No portion of the first two assessments was suspended. Respondents were ordered to pay \$16,000.

Respondents timely paid the \$16,000 and filed an application for reconsideration of Order No. 5707 on October 21, 1999. Respondents only challenge the third assessment. The application alleges the Commission erred "by failing to give reasoned

¹ Compact, tit. II, art XIII, § 4(a).

² Compact, tit. II, art XIII, § 4(a).

³ Compact, tit. II, art XIII, § 4(b).

⁴ Compact, tit. II, art XIII, § 4(c).

⁵ Compact, tit. II, art XIII, § 4(d).

consideration to its calculation of the net amount." Respondents point to the disparity between the relative size of the net assessment in this case and the relative size of the net assessments in other cases.⁶ Respondents also contend the Commission should have considered that Mr. Malekzadeh, the sole shareholder of both carriers, did not profit by respondents' misdeeds since Carrier No. 202 could have lawfully performed the transportation unlawfully performed by Malek of Virginia. Finally, respondents argue that their actions did not threaten or harm the public inasmuch as Malek of Virginia carried the same dollar amount of insurance as Carrier No. 202.

We see no error in the size of the net forfeiture assessed in Order No. 5707. The civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.⁷ In this case, deterrence alone warrants setting the net forfeiture at \$15,000. The cases cited by respondents are not to the contrary.

None of the carriers in the cases cited by respondents continued operating unlawfully in the Metropolitan District after falsely certifying to the Commission that such operations had ceased. Carrier No. 202 filed such a statement in this proceeding on December 1, 1998. Fearing that its WMATC authority was about to be suspended or revoked, Carrier No. 202 informed the Commission that Malek of Virginia did not operate in the metropolitan area. The evidence shows that Malek of Virginia was indeed operating in the Metropolitan District on December 1 and that Malek of Virginia continued operating in the Metropolitan District at least for the rest of the month. The Commission clearly has an interest in deterring cover-ups, and a carrier which engages in such behavior is less deserving of any dispensation relating to the underlying charge than carriers which do not.

As to the issue of unjust enrichment, the evidence in the record does not support the argument that respondents did not jointly profit from their misdeeds. There is no evidence in the record demonstrating that Malek of Virginia's passengers paid the same as, or less than, they would have paid had they been transported by Carrier No. 202 at its WMATC rates. There is no evidence in the record demonstrating that Malek of Virginia's operating expenses were the same as or more than Carrier No. 202's. What the record does show is that during the period under consideration, Malek of Virginia profited handsomely from its operations in the Metropolitan District. Thus, Malek of Virginia profited by its misdeeds, even if its shareholder ultimately did not.

⁶ Compare Order No. 5707 (30% of gross) with In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5065 (Apr. 24, 1997) (4.563% of gross); In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4774 (Feb. 27, 1996) (14.84% of gross); In re Bill Appell, t/a Personal Pace Tours/Tech Tours Wash., No. MP-95-18, Order No. 4762 (Feb. 8, 1996) (5.882% of gross).

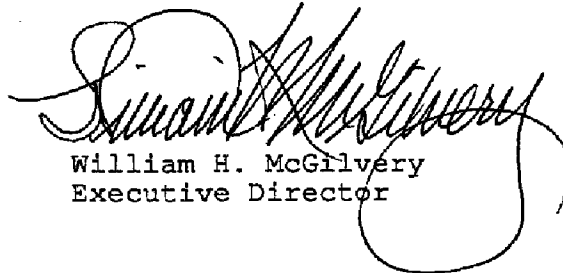
⁷ In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. MP-97-76, Order No. 5350 (June 2, 1998)

Finally, the fact that Malek of Virginia carried the same dollar amount of insurance coverage as Carrier No. 202 does not mean the public was not at greater risk from Malek of Virginia's operations. Under the Commission's insurance regulations, a WMATC carrier's insurance policy is amended to provide coverage for all vehicles used in the carrier's revenue operations, even vehicles not identified in the policy.⁸ Coverage cannot be terminated without thirty days' notice in writing to the Commission.⁹ The public did not have these protections when Malek of Virginia was behind the wheel.

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration is granted.
2. That Order No. 5707 is affirmed.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery
Executive Director

⁸ Commission Regulation No. 58 requires each WMATC carrier to maintain on file with the Commission a WMATC Certificate of Insurance and Policy Endorsement. The endorsement amends the underlying policy as follows:

In consideration of the premium stated in the Policy, the Company agrees to pay, within the limits of liability described herein, any final judgment against the Insured for bodily injury or death of a person, or for loss or damage to property of another, resulting from the operation, maintenance, or use of a motor vehicle in performing transportation subject to certification under the Compact, whether or not such motor vehicle is described in the Policy.

⁹ Regulation No. 58-07.